

Federal Communications Commission

DA 05-2693

Oct 14 7 28 AM '05

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Rockmart and Aragon, Georgia, and
Lynchburg and Chattanooga, Tennessee)

)
)
) MB Docket No. 05-282
) RM-11229
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 12, 2005

Released: October 14, 2005

Comment Date: December 5, 2005

Reply Date: December 20, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Woman's World Broadcasting, Inc. ("WWB"), licensee of Station WTSH-FM, Channel 296C2, Rockmart, Georgia. Pursuant to Section 1.420(i) of the Commission's rules,¹ WWB proposes to change the community of license for Station WTSH-FM from Rockmart to Aragon, Georgia, providing a first local service to Aragon. WWB further proposes to upgrade the channel to Channel 296C1, and to modify the license of WTSH-FM to operate on Channel 296C1 at Aragon. WWB represents that the proposed allotment of Channel 296C1 at Aragon is mutually exclusive with the current allotment of Channel 296C2 at Rockmart. In order to accommodate the proposed allotment, WWB requests the substitution of Channel 230A for vacant Channel 296A at Lynchburg, Tennessee.² If its petition is granted, WWB states that it will file an application for Channel 296C1 at Aragon, and will construct the facilities if its application is granted.

2. WWB states that Aragon is an incorporated city with a population of 1,039 persons. Aragon has a mayor and four city council members who set government policy and oversee the administrative functions performed by ten municipal employees, including a city clerk and city attorney. Aragon has a police department with four full-time officers, a fire department, and a parks and recreation department. The city has its own post office and zip code (30104). Aragon has seven churches, the Aragon cemetery, and a variety of local businesses.

¹ 47 C.F.R. §§ 1.420(g) and (i).

² In its petition, WWB also requested the reclassification of Station WSKZ(FM), Chattanooga, Tennessee, to Class C0. We issued an order requiring Citadel Broadcasting Company ("Citadel") to show cause why its authorization should not be modified to specify operation on Channel 293C0 in lieu of Channel 293C. *See Reclassification of License of Station WSKZ(FM), Chattanooga, Tennessee*, 20 FCC Rcd 7601 (MB 2005). Citadel did not submit a response. For that reason, we shall order the modification of the authorization of Station WSKZ(FM) to specify operation on Channel 293C0, Chattanooga, Tennessee.

3. *Modification of FM and TV Authorizations to Specify a New Community of License*³ establishes that, in evaluating a change of community proposal, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ Under those priorities, the existing allotment of Channel 296C2 at Rockmart would, at best, satisfy priority four, "other public interest matters."⁵ The proposed reallocation of Channel 296C1 at Aragon should, therefore, be preferred, because it would satisfy priority three, "first local service."

4. Neither Rockmart nor Aragon is located within an urbanized area, but both the existing and proposed allotment would provide 100 percent 70 dBu signal coverage to the Rome, Georgia, Urbanized Area. In addition, the proposed allotment would cover 73.7 percent of the Dalton, Georgia, Urbanized Area, and would increase coverage of the Atlanta, Georgia, Urbanized Area.⁶ Under the circumstances, we request that WWB provide a *Tuck* analysis.⁷

5. The proposed allotment changes could be made, and the transmitter site of Station WTSH-FM could be changed, with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth below:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Aragon, Georgia	----	296C1
Rockmart, Georgia	296C2	----- ⁸
Chattanooga, Tennessee	296C	293C0 ⁹
Lynchburg, Tennessee	293A	230A

Proposed Coordinates for Channel 296C1 at Aragon, Georgia: 34-22-02 NL and 84-58-33 WL, at a site 36.4 km (22.6 miles) north of Aragon.

³ 4 FCC Rcd 4870 (1989), *recon.granted in part*, 5 FCC Rcd 7094 (1990).

⁴ 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

⁵ If this proposal is adopted, Rockmart will continue to be served by Station WZOT(AM), Rockmart, Georgia.

⁶ Station WTSH-FM currently provides service to 0.5 percent of the Atlanta, Georgia, Urbanized Area. That coverage would increase to 5.6 percent, if WWB's proposal is adopted.

⁷ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁸ See note 5, *supra*.

⁹ The reference coordinates for Station WSKZ(FM) will not change following its downgrade to Class C0.

Proposed Coordinates for Channel 230A at Lynchburg, Tennessee: 35-21-58 NL and 86-17-18 WL, at a site 12.1 km (7.5 miles) northeast of Lynchburg.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,¹⁰ interested parties may file comments on or before December 5, 2005, and reply comments on or before December 20, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for WWB, as follows:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

8. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Georgia Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹¹ This document does not contain proposed information collection

¹⁰ See 47 C.F.R. §§1.415 and 1.419.

¹¹ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.¹²

10. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at (202) 418-7072. For purposes of restricted notice and comment rule making proceedings, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

¹² See 44 U.S.C. 3506(c)(4).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the Giannasis. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be

furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.